

**Testimony of
State Representative Tom Pearce
73rd House District
Before the
House Ethics and Elections Committee
Wednesday, May 26, 2010
On
House Bills 6182, 6183, 6184, 6185, 6186, 6187, 6188**

Madam Chair and Colleagues,

Thank you for an opportunity to share my thoughts on House Bills 6182 - 6188. After listening to the testimony last week on this package of bills, it was my inclination to do what I always attempt to do, which was to seek ways to make these bills better public policy by creating fairness in their intent and to avoid any unintended consequences this package could foster. The more I thought about last week's testimony I struggled with two things. First, the necessity of this package and second the motivation for bringing them forward at this time.

One of the sponsors of a bill within the package testified to how ads have been used against her recently citing a need for transparency. In my short political career I have experienced attack also. While I certainly didn't enjoy seeing fliers and ads that attacked me, I don't have the concern that was shared last week.

I believe we have two defenses against attack ads that occur during the campaign process. First I give more credit than the sponsors of this package do that the average citizen can discern the legitimacy of an attack ad. The second defense against these kinds of attacks is best described by a former Representative from the 73rd District when he advised me, "Tom, if you take care of your constituents, they will take care of you." While a couple of these bills might be good public policy as stand-alone bills. This package as a whole should receive bipartisan opposition.

These bills were introduced as a response to the recent Supreme Court case, Citizens United v Federal Elections Commission. The facts of that case were essentially this: Citizens United, a conservative non-profit corporation, wished to broadcast and advertise a documentary that it had produced--"Hillary: The Movie"--on Pay-Per-View television. There was one problem: According to the Bi-Partisan Campaign Reform Act of 2002, showing such a movie constituted a felony. Citizens United brought their case to the federal district court, and eventually, the U.S. Supreme Court.

The Supreme Court's ruling was essentially two-fold: 1) Corporations and Unions may run "electioneering communications" (ads that mention a candidate's name or show the candidate's image) shortly before elections. 2) Corporations and

Unions may use their treasuries to make independent expenditures on behalf of candidates. The decision left standing the ban on using corporate or union funds to contribute directly to a candidate.

My disagreements with my Democrat colleagues are several. First, the Michigan House of Representatives should not be in the business of censuring the U.S. Supreme Court. Yet that is what I believe this package is doing. I heard one of the bill sponsors cite, on three occasions, a dissenting opinion of Justice Stevens and how these bills are designed to meet his objections. Let me share with you what Justice Kennedy stated for the majority: "If the First Amendment has any force, it prohibits Congress from fining or jailing citizens, or associations of citizens, from simply engaging in political speech."

Clearly a majority of the Supreme Court Justices agreed with Kennedy. And when this body ignores, or rejects the opinions of the Supreme Court and proudly flaunts the fact that it is adopting a course of action contrary to the Court's opinion, it helps undermine our Republic. I, for one, will have absolutely nothing to do with such a brazen action.

Second, my colleagues have chosen to engage in demagoguery, rather than a discussion of the facts. We are told we must stop corporate spending, or it will drown out the voice of the little guy in political campaigns. This presents a world that simply does not exist. Quite simply, IBM, Dell Computer, and Progressive Insurance have more important goals than influencing election campaigns--goals such as shareholder profits. The idea that they would squander significant amounts of their precious capital in political campaigns--and, in the process, alienate half of their potential customer base--is simply ludicrous.

Indeed, the "corporations" that are likely to spend money in elections are non-profit advocacy corporations--Citizens United, Inc.; The Michigan Chamber, Inc.; AARP, Inc.; or NAACP, Inc.

Third, the holding of the Citizens United Case applied to unions as well as corporations. Unions were free to use their treasury funds to run issue ads or make independent expenditures on behalf of candidates that are sympathetic to the union causes.

Yet the substantive provisions of these bills do not apply to unions. Why is that? Why, if you are worried about the consequences of the Citizens United opinion, do you exempt unions--and the millions of dollars they will spend--from the legislation? Such an omission indicates that it is not principle, but a partisan political agenda, that the Democrats are pushing.

Now, it may be that the sponsors of this package would be willing to make it a level playing field and put the same restrictions on every special interest group. But quite frankly I am not willing to go there either because I believe the freedom

of speech that is given to each one of us in the Constitution should not be tampered with.

Now, turning to the substance of the bills, I will note three serious objections. I have many, many additional objections, but will focus on only three.

House Bill 6183 requires corporations wishing to make independent expenditures to register the expenditure with the Secretary of State five days before it makes the expenditure. This registration requirement constitutes a prior restraint on speech and violates the First Amendment.

House Bill 6184 requires that a corporation disclose to all shareholders the nature of a proposed independent expenditure at least 30 days prior to making the expenditure; and, that a majority of shareholders give their consent to the expenditure. This makes independent expenditures by publicly-traded corporations a practical impossibility.

HB 6186 prohibits a corporation with a shareholder who resides in a foreign country from making an independent expenditure. I find it inconceivable that there is a single publicly traded corporation that does not have at least one foreign stockholder; the practical effect of this bill will be to prohibit independent expenditures from for-profit corporations. This bill is also unnecessary, in that federal law already prohibits foreigners from making contributions in American elections.

Finally, if I were to change this package, the first amendment I would present would be to remove the word corporation and replace it with job-providers. I think too often we forget that when we place new regulations on job-providers, as this package would do, we take another step toward negatively impacting our economy. The priority of this legislature should be doing everything it can to position Michigan for job growth.

Thank you Madam Chair.